

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

| | | |
|---|---|-------------------|
| Christopher Prosser, individually and |) | |
| on behalf of all others similarly situated, |) | |
| |) | |
| Plaintiffs. |) | |
| |) | |
| Vs. |) | No. 4:23-cv-00124 |
| |) | |
| USHealth Advisors, LLC, et al., |) | |
| |) | |
| |) | |
| Defendants. |) | |

MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT

Comes Now the Plaintiff, by and through the undersigned counsel, and pursuant to Rule 15 of the Federal Rules of Civ. Proc., respectfully requests leave to file his second Amended Complaint, herein for the following reasons:

1. The Plaintiff originally filed this class action complaint in February 2023 and a waiver of service was provided to the Defendants and was ultimately forwarded to their counsel, Mr. Loose.

2. Initially, Mr. Loose agreed to waive service, albeit failed to file the waiver of service form with the Clerks office for approximately three months.

3. At defense counsel's requests during emails and telephone calls, the Plaintiff initially agreed to dismiss all individual defendants to engage in serious settlement negotiations over the 87 unlawful telemarketing calls.

4. During the negotiations counsel was provided with a series of excuses regarding the Defendants failure to engage in serious negotiations to avoid protracted litigation, to include the Defendants were on “spring break” and were unavailable.

5. The Court ultimately issued an order that Plaintiff perfect process on the UShealth and Doe Defendants or face dismissal of the complaint.

6. In response, and due to the defendant’s bad faith during these discussions, Plaintiff refiled the original complaint as a first amended complaint renaming the individual defendants and caused process to be perfected and the returns filed.

7. Ultimately, Plaintiff and Defense counsel have exchanged a number of emails and concluded there are a number of defendants which should be excluded from the litigation, and as such, Plaintiff has streamlined the Second Amended complaint based on that understanding removing one count and numerous defendants.

8. It is not anticipated that the Defendants will have any objection to the second amended complaint as it complies with the parties’ understanding regarding the identity of the proper defendants at this time and removes and condenses the original and amended complaint by approximately 20 pages, therein more clearly and concisely focusing the claims and ultimately conserving precious judicial resources. See Proposed Second Amended Complaint filed contemporaneously herewith this motion.

9. The Defendants cannot be prejudiced by the filing of a Second Amended Complaint, in that it dismisses a number of Defendants and more clearly and concisely focuses the litigation to four central claims against the Corporate and Doe defendants.

WHEREFORE, Plaintiff prays for leave to file his Second Amended Complaint, and for such further relief deemed just in the circumstances.

Respectfully submitted,

/s/Edwin V. Butler, Esquire
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Attorney for the Plaintiff

Certificate of Service

I hereby certify that the above and foregoing motion for leave to file the Proposed Second Amended Complaint was served electronically this 19th day of June 2023, on all Attorneys of record via ECF/CM filing and notification system. This document was also scanned for viruses using Windows Defender 2022 and is free of viruses and malware.

/s/Edwin V. Butler
Edwin V. Butler